Tan Sri Musa bin Hj Aman & Ors v Tun Datuk Seri Hj Panglima Hj Juhar Hj Mahiruddin & Ors

HIGH COURT (KOTA KINABALU) — APPLICATION FOR JUDICIAL REVIEW NO BKI-13NCvC-19/8 OF 2020
LEONARD SHIM JC
21 AUGUST 2020

Civil Procedure — Judicial review — Application for leave — Applicants applied for leave to apply for judicial review to review and quash dissolution and proclamation by first respondent — Whether applicants had locus standi to bring action for judicial review — Whether first respondent had discretionary powers to dissolve Sabah State Legislative Assembly — Whether issue of dissolution of Sabah State Legislative Assembly by first respondent was non-justiciable — Sabah State Constitution arts 10(1), (2)(b) & 21(2)

This was an application for leave to apply for judicial review ('encl 1') by the applicants under O 53 r 3 of the Rules of Court 2012 to review and quash the dissolution by the first respondent ie the Head of the State of Sabah ('YDPN') of the 15th Sabah State Legislative Assembly ('LA') and the Proclamation of Dissolution of the LA ('the proclamation'). On 10 May 2018, the first applicant was appointed as the Chief Minister of Sabah but his term of office was short lived. Two days after his appointment as the Chief Minister of Sabah, the first respondent was satisfied that the first applicant ceased to command the confidence of the majority of members of the LA and asked the first applicant to resign. The first respondent then proceeded to appoint the second respondent as the Chief Minister. On 29 July 2020, the first applicant announced to the media that he had obtained a simple majority to form a new state government. On the same evening, the second respondent requested and/or advised the first respondent to consent to a dissolution of the LA pursuant to art 10(1) and (2)(b) of the Sabah State Constitution ('the Sabah Constitution'). On 30 July 2020, the first respondent consented to the dissolution of the LA and signed the proclamation pursuant to art 21(2) of the Sabah Constitution which was *gazetted* on the same day. Hence, this application by the applicants. The applicants' main ground of contention was that the written request dated 29 July 2020 was invalid and was therefore, incapable of invoking and causing the first respondent to exercise his prerogative to dissolve the LA. The issue for consideration was whether the issue of dissolution of the LA by the first respondent was non-justiciable.

Held, dismissing encl 1:

(1) The applicants were members of the LA who were directly affected by the proclamation of dissolution which they applied to declare as ultra vires the Sabah Constitution and void. They had a real and genuine interest in the subject matter. The applicants had met the requirements or threshold for locus standi and were clothed with locus standi to bring this action for judicial review (see para 18).

(2) Even if the second respondent had lost the confidence of the majority of the members of the LA on 29 July 2020, the second respondent could still request and advice the YDPN for a dissolution of the LA. Only when the request was refused by the YDPN would the second respondent had to tender the resignation of the members of the Cabinet. Advice under art 10(1) of the Sabah Constitution did not depend on the loss of confidence of the majority members of the LA. The first respondent had the absolute discretion to consent or withhold his consent to dissolve the LA (see para 25).

(3) A plain and careful reading of the contents of the written request dated 29 July 2020 showed that the words used therein were unambiguous and the said letter was a 'request' by the second respondent for a dissolution of the LA. The written request also contained words of 'advice' by the second respondent to the first respondent on the political situation and instability in the state of Sabah at the material time and the appropriateness to return the people's mandate to the people of Sabah to choose a new government. Therefore, the written request dated 29 July 2020 was a 'request' as well as an 'advice' for a dissolution of the LA for the purpose of art 21(2) of the Sabah Constitution. Article 10(4) of the Sabah Constitution did not take away or diminish the prerogative power or absolute discretion of the YDPN to withhold or not to withhold consent to the dissolution of the LA but served to reinforce the same. Therefore, the written request and advice dated 29 July 2020 was sufficient and capable of causing the first respondent to invoke and exercise his prerogative and constitutional duty to dissolve the LA under art 21(2) of the Sabah Constitution. The second respondent had acted within his constitutional right or power to request and advice the first respondent to dissolve the LA on 29 July 2020 and the first respondent had acted within the ambit of his constitutional power to dissolve the LA. In the premises, the dissolution and proclamation dated 30 July 2020 was constitutional and valid and was not amenable to judicial review and was non-justiciable (see paras 26, 33 & 48).

[Bahasa Malaysia summary

Ini adalah permohonan kebenaran untuk memohon semakan kehakiman ('lampiran 1') oleh pemohon di bawah A 53 k 3 Kaedah-Kaedah Mahkamah 2012 untuk menyemak dan membatalkan pembubaran oleh responden pertama iaitu Ketua Negeri Sabah ('YDPN') terhadap Dewan Undangan

Negeri Sabah ke-15 ('DUN') dan Pengisytiharan Pembubaran DUN ('pengisytiharan'). Pada 10 Mei 2018, pemohon pertama dilantik sebagai Ketua Menteri Sabah tetapi tempoh jawatannya tidak lama. Dua hari selepas pelantikannya sebagai Ketua Menteri Sabah, responden pertama berpuas hati bahawa pemohon pertama tidak lagi mendapat kepercayaan majoriti anggota DUN dan meminta pemohon pertama meletak jawatan. Responden pertama kemudian melantik responden kedua sebagai Ketua Menteri. Pada 29 Julai 2020, pemohon pertama mengumumkan kepada media bahawa dia telah memperoleh majoriti mudah untuk membentuk kerajaan negeri yang baru. Pada petang hari yang sama, responden kedua meminta dan/atau menasihati responden pertama untuk bersetuju dengan pembubaran DUN menurut perkara 10(1) dan (2)(b) Perlembagaan Negeri Sabah ('Perlembagaan Sabah'). Pada 30 Julai 2020, responden pertama bersetuju dengan pembubaran DUN dan menandatangani pengisytiharan berdasarkan perkara 21(2) Perlembagaan Sabah yang diwartakan pada hari yang sama. Oleh itu, permohonan ini oleh pemohon. Alasan utama pemohon adalah bahawa permintaan bertulis bertarikh 29 Julai 2020 tidak sah dan oleh itu, tidak dapat membangkitkan dan menyebabkan responden pertama menggunakan haknya untuk membubarkan LA. Isu untuk pertimbangan adalah sama ada isu pembubaran DUN oleh responden pertama tidak boleh diadili.

Diputuskan, menolak lampiran 1:

(1) Pemohon adalah ahli DUN yang secara langsung terkesan oleh pengisytiharan pembubaran yang mana mereka pohon untuk diisytiharkan sebagai ultra vires terhadap Perlembagaan Sabah dan batal. Mereka mempunyai kepentingan yang nyata dan wajar dalam perkara subjek ini. Pemohon telah memenuhi syarat atau ambang untuk locus standi dan mempunyai locus standi untuk membawa tindakan ini untuk semakan kehakiman (lihat perenggan 18).

(2) Walaupun responden kedua kehilangan kepercayaan majoriti ahli DUN pada 29 Julai 2020, responden kedua masih boleh meminta dan memberi nasihat kepada YDPN untuk pembubaran LA. Hanya apabila permintaan itu ditolak oleh YDPN, responden kedua harus mengemukakan peletakan jawatan anggota Kabinet. Nasihat di bawah perkara 10(1) Perlembagaan Sabah tidak bergantung pada hilangnya kepercayaan anggota majoriti LA. Responden pertama mempunyai budi bicara mutlak untuk menyetujui atau menahan persetujuannya untuk membubarkan DUN (lihat perenggan 25).

(3) Pembacaan yang jelas dan teliti mengenai kandungan permintaan bertulis bertarikh 29 Julai 2020 menunjukkan bahawa kata-kata yang digunakan di dalamnya jelas dan surat tersebut adalah 'permintaan' oleh responden kedua untuk pembubaran LA. Permintaan bertulis itu juga mengandungi kata-kata 'nasihat' oleh responden kedua kepada

responden pertama mengenai keadaan politik dan ketidakstabilan di negeri Sabah pada waktu yang material dan kesesuaian untuk mengembalikan mandat rakyat kepada rakyat Sabah untuk memilih Kerajaan baru. Oleh itu, permintaan bertulis bertarikh 29 Julai 2020 adalah 'permintaan' dan juga 'nasihat' untuk pembubaran DUN untuk tujuan perkara 21(2) Perlembagaan Sabah. Perkara 10(4) Perlembagaan Sabah tidak menghilangkan atau mengurangi kuasa prerogatif atau budi bicara mutlak YDPN untuk menahan atau tidak menahan persetujuan untuk pembubaran DUN tetapi berfungsi untuk memperkuatnya. Oleh itu, permintaan dan nasihat bertulis bertarikh 29 Julai 2020 adalah mencukupi dan mampu menyebabkan responden pertama menggunakan dan menjalankan kewajipan prerogatif dan perlembagaannya untuk membubarkan DUN di bawah perkara 21(2) Perlembagaan Sabah. Responden kedua telah bertindak dalam hak atau kuasa perlembagaannya untuk meminta dan menasihati responden pertama untuk membubarkan DUN pada 29 Julai 2020 dan responden pertama telah bertindak dalam bidang kuasa perlembagaannya untuk membubarkan LA. Dengan itu, pembubaran dan pengisytiharan bertarikh 30 Julai 2020 adalah berperlembagaan dan sah dan tidak tertakluk kepada semakan kehakiman dan tidak boleh diadili (lihat perenggan 26, 33 & 48).]

Cases referred to

Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors [1987] 2 MLJ 724; [1988] 1 CLJ Rep 317 (refd)

Bar Malaysia v Peguam Negara Malaysia & Anor [2016] MLJU 1597, HC (refd)

Black v Canada (Prime Minister) 2001 CanLII 8537 (ON CA), CA (refd)

Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor [2020] 4 MLJ 581; [2020] 7 CLJ 137, FC (refd)

Chng Suan Tze v Minister of Home Affairs & Ors and other appeals [1988] 1 SLR 132; [1988] 1 SLR(R) 525, CA (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935; [1985] AC 374, HL (refd)

Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener) [2004] 2 MLJ 257; [2004] 1 CLJ 701, FC (refd)

Dato' Dr Abd Isa bin Ismail v Dato' Abu Hasan bin Sarif & Anor [2013] 2 MLJ 449; [2013] 2 CLJ 857, FC (refd)

Datuk Mohd Zaid bin Ibrahim v Peguam Negara Malaysia [2017] 9 MLJ 502, HC (refd)

Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener) [2010] 2 MLJ 285; [2010] 2 CLJ 925, FC (refd)

Dato' Dr Zambry bin Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar bin

Jamaluddin (Attorney General of Malaysia, intervener) [2009] 5 MLJ 464; [2009] 5 CLJ 265, CA (refd)
Datuk (Datu) Amir Kahar bin Tun Haji Mustapha v Tun Mohd Said bin Keruak & Ors [1994] 3 MLJ 737, HC (refd)
Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii [2009] 4 MLJ 165; [2009] 4 CLJ 449, FC (folld)
Datuk Mohd Zaid bin Ibrahim v Peguam Negara Malaysia [2017] 9 MLJ 502, HC (refd)
Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor [2020] 4 MLJ 133; [2020] 3 CLJ 593, FC (refd)
Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun [2016] 4 MLJ 661; [2016] 7 CLJ 143, FC (refd)
Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia [2013] 2 MLJ 321, FC (refd)
Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (refd)
Jerry WA Dusing @ Jerry W Patel & Anor v Majlis Agama Islam Wilayah Persekutuan (MAIWP) & Ors [2017] 1 MLJ 216; [2017] 1 CLJ 133, CA (refd)
Juraimi bin Husin v Pardons Board, State of Pahang & Ors [2002] 4 MLJ 529, FC (refd)
Keke and Others v Scotty and Others (No 2) [2013] 5 LRC 580, SC (distd)
Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal [2016] MLJU 1649; [2016] 8 CLJ 804, CA (refd)
Khairuddin bin Abu Hassan v Tan Sri Mohamed Apandi Ali (sued in his capacity as the appointed 'Attorney General') [2017] 9 MLJ 441, HC (refd)
Lee Hsien Loong v Review Publishing Co Ltd and another and another suit [2007] SGHC 24, HC (refd)
Lim Cho Hock v Government of The State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 2 MLJ 148 (refd)
Long bin Samat & Ors v Public Prosecutor [1974] 2 MLJ 152, FC (refd)
Majlis Peguam Malaysia v Rajehgopal a/l Velu & Anor [2017] 1 MLJ 596; [2017] 2 CLJ 493, FC (refd)
Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145; [2014] 2 CLJ 525, FC (refd)
Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490, FC (refd)
Pe Long @ Jimmy & Ors, Re; Pe Long & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors [1976] 2 MLJ 133 (refd)
Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443; [2019] 4 CLJ 561, FC (folld)
Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik

A *Kee* [1983] 2 MLJ 35, FC (refd)
Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)
QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164; [2006] 2 CLJ 532, CA (refd)
B *R (on the application of Miller) v The Prime Minister; Cherry and others v Advocate General for Scotland* [2019] UKSC 41; [2019] All ER (D) 61 (Sep), SC (folld)
Sampanthan and others v Attorney General and others [2019] 5 LRC 29, SC (distd)
C *Shamsudin bin Che Mat & Ors v Datuk Bandar Kuala Lumpur* [2000] 4 MLJ 177; [2000] 1 LNS 185, HC (refd)
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385, SC (refd)
D *Sime Darby Plantation Bhd v Pengarah Tanah dan Galian Negeri Melaka & Ors* 2020] 7 MLJ 776; [2020] 2 CLJ 409, HC (refd)
Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2002] 2 MLJ 413; [2002] 2 CLJ 697, CA (refd)
Superintendent of Pudu Prison & Ors v Sim Kie Chon [1986] 1 MLJ 494, SC
E (refd)
Sykt Showkat Industries & Realty Sdn Bhd v Gergaji Development Sdn Bhd [2018] MLJU 1486; [2018] 1 LNS 1584, CA (refd)
Tan Sri Musa bin Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another appeal [2020] 3 MLJ 46; [2020] 3 CLJ 42, CA (refd)
F *Tan Sri Musa Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another case* [2019] 10 MLJ 329; [2019] 2 CLJ 813, HC (refd)
Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 CLJ 927, CA (refd)
Teh Cheng Poh v Public Prosecutor [1979] 1 MLJ 50, PC (refd)
G *Teh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional* [2015] MLJU 213, CA (refd)
Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors [2011] 1 MLJ 128, HC (refd)
Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd [1995] 2 MLJ 442; [1995]
H 3 CLJ 627, SC (refd)
Tun Datu Haji Mustapha bin Datu Harun v Tun Datuk Haji Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan [1986] 2 MLJ 391 (refd)
Tun Datuk Haji Mohamed Adnan Robert v Tun Datu Haji Mustapha bin Datu
I *Harun; Datuk Joseph Pairin Kitingan v Tun Datu Haji Mustapha bin Datu Harun* [1987] 1 MLJ 471, SC (refd)
WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 CLJ 478, FC (refd)
YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju

Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24; [2009] 4 CLJ 253, FC (refd)

YB Menteri Sumber Manusia v Association of Bank Officers, Peninsular Malaysia [1999] 2 MLJ 337; [1999] 2 CLJ 471, FC (refd)

Yong Nyee Fan & Sons Sdn Bhd v Kim Guan & Co Sdn Bhd [1979] 1 MLJ 182, FC (refd)

Yong Sze Fun & Anor (t/a Perindustrian Makanan & Minuman Layang-Layang) v Syarikat Zamani Hj Tamin Sdn Bhd & Anor [2012] 1 MLJ 585; [2011] 1 LNS 1307, CA (refd)

Legislation referred to

Constitution of Sabah arts 6(3), 7(1), 10(1), (2), (2)(b), 10(3), 10(4), 21(2), (4)
Constitution of Perak arts XVI(6), XVIII(2)(a), (2)(b), XXXVI(2)
Federal Constitution art 145(3)
Rules of Court 2012 O 53 r 3

Tengku Ahmad Fuad bin Burhanuddin (Sukumaran Vanugopal, Wilson Chang and Alice Lim with him) (FT Ahmad & Co) for the first to 33rd applicants.
Brenndon Keith Soh (Dgku Fazidah Hatun bt Pg Bagul, Chung Jiun Dau and Chee Chun Yen with him) (State Attorney General Chambers) for the first, second and fourth respondents.
Suzana Atan (Narkunavathy S with her) (Federal Attorney General Chambers) for the third respondent.

Leonard Shim JC:

[1] This is an application for leave to apply for judicial review by the 33 applicants under O 53 r 3 of the ROC 2012 to review and quash the dissolution by the first respondent of the 15th Sabah State Legislative Assembly and the proclamation dated 30 July 2020. By this notice of application for leave for judicial review (encl 1), the applicants are applying for leave to apply for judicial review and the orders sought for if leave is granted are as follows:

(a) a declaration that the written request by the second respondent to the first respondent on 29 July 2020 to dissolve the 15th Sabah State Legislative Assembly was incapable of causing the dissolution of the 15th Sabah State Legislative Assembly as it was ultra vires the Constitution of the State of Sabah ('Sabah Constitution');

(b) a declaration that the second respondent's position as Chief Minister was vacated pursuant to art 7(1) of the Sabah Constitution following his written request dated 29 July 2020 to the first respondent for the dissolution of the Sabah State Legislative Assembly purportedly pursuant to art 10(1)(2)(b) (as incorrectly cited by the second respondent) of the same;

(c) in the alternative, a declaration that the second respondent's position as Chief Minister was deemed to have been vacated pursuant to art 7(1) of the Sabah Constitution as soon as the first respondent was given notice that the second respondent had lost the confidence of the majority of the members of the Sabah State Legislative Assembly which occurred on 29 July 2020;

(d) a declaration that following the vacation of the second respondent's position as Chief Minister, the first respondent was under a duty to exercise his discretion as to whether to withhold consent to the request for dissolution or appoint a member of the Sabah State Legislative Assembly pursuant to art 6(3) of the Sabah Constitution who in his judgement is likely to command the confidence of a majority of the members of the Sabah State Legislative Assembly;

(e) a declaration that the first respondent breached his constitutional duty by failing to exercise his discretion, as provided under art 10(2) of the Sabah Constitution, to consider whether to appoint a member of the Sabah State Legislative Assembly pursuant to art 6(3) of the Sabah Constitution who in his judgement is likely to command the confidence of a majority of the members of the Sabah State Legislative Assembly;

(f) a declaration that the proclamation by the first respondent dated 30 July 2020 (No DUNS [R]100-52/8 (60)] for the dissolution of the 15th Sabah State Legislative Assembly purportedly under art 21(2) of the Sabah Constitution ('the proclamation') and the purported dissolution of the 15th Sabah State Legislative Assembly was ultra vires the Sabah Constitution and void ab initio;

(g) an order of certiorari quashing the second respondent's written request to the first respondent on 29 July 2020 with immediate effect;

(h) an order of certiorari quashing the proclamation with immediate effect;

(i) an order of certiorari quashing the Sabah State Government *Gazette* dated 30 July 2020 (Volume: LXXV No 30);

(j) costs; and

(k) such further or other orders or directions which this honourable court deems fit and just in the circumstances.

[2] The grounds of this application for judicial review as stated in statutory statement (encl 4) are as follows:

(a) illegality: the Proclamation and the Dissolution of the Sabah State Legislative Assembly is ultra vires the Sabah Constitution;

(b) the first respondent was not advised under art 10(1) of the Sabah Constitution to dissolve the Sabah State Legislative Assembly;

(c) even if the first respondent was advised by the second respondent to dissolve the Sabah State Legislative Assembly, the second respondent was not in a position to do so because the second respondent is deemed to have vacated his position as Chief Minister under art 7(1) of the Sabah Constitution;

(d) the first respondent failed to act in accordance with art 7(1) read with art 10(2) of the Sabah Constitution in that he failed to exercise his constitutional discretion to consider whether to appoint a new Chief Minister under art 6(3) or to dissolve the Sabah State Legislative Assembly;

(e) illegality: the second respondent's written request dated 29 July 2020 to the first respondent was ultra vires the Sabah Constitution;

(f) unreasonable/illegality: the first and second respondents abused their power and /or office;

(g) the first respondent refused to be presented with the said 33 statutory declarations which expressed confidence in the first applicant as the Chief Minister;

(h) the second respondent refused, failed and/or neglected to act in accordance with art 7(1) of the Sabah Constitution by tendering his resignation as the Chief Minister of Sabah along with the members of his cabinet; and

(i) in making the said written request dated 29 July 2020 to the first respondent to dissolve the Sabah State Legislative Assembly, acted ultra vires the Sabah Constitution.

[3] Brief background facts:

(a) on 10 May 2018, the first applicant was appointed as Chief Minister of Sabah but his term of office was short lived. Two days after his appointment as the Chief Minister of Sabah, the first respondent was satisfied that the first applicant had ceased to command the confidence of the majority of members of the Legislative Assembly and asked the first applicant to resign as the Chief Minister of Sabah;

(b) on 12 May 2018 the first respondent proceeded to appoint the second respondent as Chief Minister;

(c) on the afternoon or evening of 29 July 2020, the first applicant announced to the media that he has obtained a simple majority to form a new state government;

(d) on the same evening of 29 July 2020, the second respondent requested and/or advised the first respondent to consent to a dissolution of the

Sabah Legislative Assembly ('LA') pursuant to art 10(1)(2)(b) of the Sabah State Constitution ('the Sabah Constitution');

(e) the first and the second respondents were the Head of the State of Sabah and the Chief Minister of Sabah on 29 July 2020 respectively under the Sabah Constitution;

(f) on the morning of the 30 July 2020, the first respondent consented to the dissolution of the LA and signed the proclamation of dissolution of the LA ('proclamation') pursuant to the empowering provision of art 21(2) in the Constitution. On 30 July 2020 at about 8am, the first respondent met the second respondent and handed the proclamation to the second respondent. The proclamation was subsequently *gazetted* on the same day and the third respondent was duly notified of the same; and

(g) based on the 28th applicant's affidavit in support ('encl 3'), the first applicant's letter dated 30 July 2020 ('exh OJ1') seeking an audience with the first respondent was handed over to the personal private secretary of the first respondent *after* the proclamation had already been signed.

PRINCIPLES ON APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

[4] It is trite that an applicant for leave to apply for judicial review must show that he or she has an arguable case and that has the same meaning as a case which is not frivolous.

In *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927, the Court of Appeal held:

> (1) Applications for leave under O 53 are made — and they must be made — through a two stage process. The High Court should not go into the merits of the case at the leave stage. Its role is only to see if the application for leave is frivolous. If, for example, the applicant is a busybody, or the application is made out of time or against a person or body that is immunised from being impleaded in legal proceedings then the High Court would be justified in refusing leave in limine. So too will the court be entitled to *refuse leave if it is a case where the subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable, eg, proceedings in Parliament.* (paras 5 & 10)
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> (2) To say that a case is *frivolous* is the same thing as saying that there is *no arguable case.* Where the High Court has a doubt about whether the case is frivolous or not, it is for that court to invite the putative respondent to attend and make representations as to whether or not leave should be granted. So, the putative respondent to the substantive motion is not entitled as a matter of right to appear, demand to be heard and to convert the proceedings into a full blown opposed ex parte hearing on the merits of the application. (para 14)
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> (3) The inter partes leave hearing should not be anywhere near so extensive as a full

substantive judicial review hearing. The only circumstance in which a court may, on a leave application, undertake a closer scrutiny of the merits of the case is on an application for extension of time to apply for judicial review. (paras 14 & 16)

(4) Judicial review may be resisted by a respondent on the ground that he is *not someone who is amenable to judicial review.* This is quite different from amenability of particular subject matter to judicial review. A public decision-maker may be amenable to judicial review. But the *particular subject matter upon which he has decided or acted upon may be non-justiciable, for example, because it is a political question unsuitable of the courts to review.* (para 35).

[5] In *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296; [2012] 4 CLJ 478, the Federal Court held:

[12] For purposes of its application, the appellant had alluded to the statutory route of O 53 of the Rules. Under this order two stages are anticipated, with the leave stage being the first, to be followed closely by the substantive hearing after successfully obtaining leave at the High Court. At the leave stage, on a quick perusal of the material available, if the court thinks that subsequently at the substantive hearing stage an *arguable case* may be disclosed, and the relief sought may be granted, leave should be granted (*IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617). In Malaysia, the Federal Court in *Mohd Nordin Johan v The Attorney-General, Malaysia* [1983] 1 MLJ 68; [1983] 1 CLJ 130; [1983] CLJ Rep 271 when allowing the appeal, opined that 'the point taken was *not frivolous* to merit refusal of leave in limine and justified argument on a substantive motion for certiorari '. Without the need to go into depth of the abundant authorities, suffice if we state that leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though ie, unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.

...

[26] Even though satisfied that the appellant has successfully established the issue of locus standi and factor of time, it failed to establish that the impugned matter falls under public law realm. In fact we are satisfied that the matter falls squarely under private law. In conclusion, despite the earlier error committed by the respondent when it disconnected the electricity supply for eight hours, we are convinced that the basis of the appellant's appeal is outside the ambit of judicial review. We are satisfied that an arguable case will not be disclosed and the orders sought for granted at the High Court if leave was given (*Mohamed Nordin bin Johan v Attorney General Malaysia*; *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927).

[6] At the outset, it must be noted that this case does not concern the dismissal or appointment of the Chief Minister on 30 July 2020. The core subject matter in this application is whether the dissolution of the 15th Sabah State Legislative Assembly (LA) and the proclamation by the first respondent

made at the request or advice of the second respondent was ultra vires the Sabah Constitution. The main issue raised by the putative respondents at the leave stage is that the dissolution of the LA and the proclamation by the putative first respondent on 30 July 2020 is an exercise of the first respondent's prerogative and discretion vested in him under the Sabah Constitution which is non-justiciable.

[7] The learned SFC is appearing on behalf of the Attorney General of Malaysia in the capacity of protector of the public interest. See *Jerry WA Dusing @ Jerry W Patel & Anor v Majlis Agama Islam Wilayah Persekutuan (MAIWP) & Ors* [2017] 1 MLJ 216; [2017] 1 CLJ 133. After hearing the submissions by the learned counsel for the applicants on the application for leave to apply for judicial review, it became clear that the main issue for this court to decide was whether the issue of dissolution of the LA by the first respondent is non-justiciable. Therefore, this court invited the learned State Attorney General of Sabah to make a submission on the issue of justiciability of the dissolution which involves interpretation of the Sabah Constitution.

[8] The issue of justiciability can be decided at the leave stage. See *Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321 wherein the Federal Court held:

> (3) *The issue of whether the decision of the first and/or second respondent was amenable to judicial review could be decided at the leave stage*. It was not a requirement that the court should only decide on the issue after hearing all the evidence at the substantive motion for judicial review. There was no purpose for the High Court to grant leave for the purpose of investigation on a full inter partes basis, when the supporting documents exhibited by the appellant clearly showed that the appellant had no arguable case.

[9] Also, in the Court of Appeal authority of *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927 it was stated that:

> [10] So too will the court be entitled to refuse leave if it is a case where the *subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable, eg, proceedings in Parliament.*

[10] If this court finds that the decision of the first respondent to dissolve the LA is non-justiciable, this court ought to refuse leave as was decided by the Supreme Court in *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd* [1995] 2 MLJ 442; [1995] 3 CLJ 627:

> (ii) If the Judge is satisfied that there is no arguable case he should dismiss the application for leave to move for judicial review.

PRINCIPLES OF INTERPRETATION OF A CONSTITUTION

[11] This case substantially involves the interpretation of the Sabah Constitution by the court and I have been appraised and reminded of the guiding principles of the interpretation of a constitution. In the case of *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165; [2009] 4 CLJ 449, the Federal Court, (per Zaki Tun Azmi CJ) stated as follows:

> [31] Regarding the interpretation of art. 161B of the Constitution, we refer to *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* where Raja Azlan Shah (AG LP) had this to say:
>
> > In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a *constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — 'with less rigidity and more generosity than other Acts'* (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21). A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.' The principle of interpreting constitutions *'with less rigidity and more generosity'* was again applied by the Privy Council in *Attorney-General of St Christopher, Nevis and Anguilla v. Reynolds* [1979] 3 All ER 129, 136.
>
> *It is in the light of this kind of ambulatory approach that we must construe our Constitution.'*

[12] In the case of *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285; [2010] 2 CLJ 925, the Federal Court (per Arifin Zakaria CJ (Malaya) as His Lordship then was) stated as follows:

> Principles Applicable to the Interpretation of a Constitution
>
> [24] The answers to the questions posed to us turn essentially on the construction to be accorded to the relevant provisions of the State Constitution. We have been reminded by learned counsel for the parties as to the principles to be adopted in the interpretation of the Constitution. Basically, a Constitution being the supreme law of a State or Federation, it has to be interpreted differently from ordinary statute. The Privy Council in *Hinds v The Queen* [1976] 1 All ER 353 said:

> To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would ... be misleading.

(see also *Liyanage v Regina* [1966] 1 All ER 650).

[25] In *Minister of Home Affairs v Fisher* [1979] 3 All ER 21, the Privy Council was faced with interpreting the fundamental rights provisions of the Bermuda Constitution. It concluded by saying that these provisions 'call for a generous interpretation avoiding the austerity of tabulated legalism, suitable to give to individuals the full measure of the fundamental rights and freedom.' (See also *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50; [1978] 1 LNS 202) And this court in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697; [1992] 1 CLJ Rep 72; [1992] 2 CLJ 1125; stated:

> Secondly, as the Judicial Committee of the Privy Council held in *Minister of Home Affairs v Fisher* at p 329, a constitution should be construed with less rigidity and more generosity than other statutes and as sui juris, calling for principles of interpretation of its own, suitable to its character but not forgetting that respect must be paid to the language which has been used.
>
> In this context, it is also worth recalling what Barwick CJ said when speaking for the High Court of Australia, in *Attorney General of the Commonwealth, ex relatione McKinley v Commonwealth of Australia* at p 17:
>
> The only true guide and the only course which can produce stability in constitutional law is *to read the language of the constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning.*

[26] *NS Bindra's Interpretation of Statutes*, 10th Ed at p 1295 speaks of two theories of interpretation of Constitution namely, the mechanical and organic theories. At p 1296 it stated that the organic method is to be preferred. 'The organic method requires us to see the present social conditions and interpret the Constitution in a manner so as to resolve the present difficulties.' From the authorities cited above our courts are inclined to the organic theory in the interpretation of the Constitution.

[27] One other important guide in the interpretation of the Constitution is that, *'The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions.* It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous.

LOCUS STANDI

[13] Before we begin to consider the issue of justiciability, it is appropriate to consider the issue of locus standi. In his written submission, the learned

counsel for the applicants submitted that the applicants are individually or collectively, adversely affected by the said written request made by the second respondent and/or proclamation made by the first respondent and contended that the applicants have locus standi to bring this action for judicial review. The learned counsel for the applicants referred to a number of decided cases in support of his contention.

[14] In *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133; [2020] 3 CLJ 593 the Federal Court (per Nalini Pathmanathan FCJ) held that:

> [43] The key question is thus whether there is a real and actual controversy between the parties which will affect their rights and interests. Conceptually, the question is inextricably intertwined the test of locus standi, which requires a party to have been *'adversely affected'* in the sense that they have a *'real and genuine interest in the subject matter' (Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525 at [58]). A violation of a constitutional right gives rise both to a 'real interest' for a party to bring the action and a 'real controversy' between the parties to the action (*Tan Eng Hong* at [106]). As such, in the context of determining whether there is a real controversy in a constitutional challenge, attempts to sever the requirement of an actual controversy from the notion of standing would be 'conceptually awkward, if not impossible' *(Croome v State of Tasmania* (1997) 142 ALR 397 at 405–406).

[15] In *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525 the Federal Court held that:

> (1) The 'adversely affected' test, a single test for all the remedies provided under O 53 of the RHC, was preferred by the court (*QSR Brands Bhd v Suruhanjaya Sekuriti & Anor*, foll). For an applicant to pass the 'adversely affected' test, the applicant has to at least show that *he has a real and genuine interest in the subject matter.* It is not necessary for the applicant to establish infringement of a private right or the suffering of special damage.

[16] The applicants also referred to the case of *Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors* [1987] 2 MLJ 724; [1988] 1 CLJ Rep 317 where the High Court held that a State Assemblyman had locus standi for he was a member of the Legislative Assembly and had been directly affected by the proclamation. The said High Court held as follows:

> On the question of locus standi I agree with the submission of plaintiff's Counsel that he has one since he was a member of the Sabah State Assembly directly affected by the proclamation dissolving the State Assembly which he applies to be declared void. He is affected by the order of dissolution directly.

[17] Reference was also made by the applicants to the case of *Lim Cho Hock v Government of The State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148 where Abdoolcader J (as His Lordship then was) decided that the plaintiff who was a member of the Perak State Legislative Assembly had locus standi to challenge, amongst others, the appointment of the Menteri Besar as President of the Council. The relevant passages of Abdoolcader J's judgment are reproduced below;

> Locus standi of the plaintiff.
>
> The plaintiff is a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang ...
>
> ...
>
> In the light of the authorities I have discussed, I can see no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he does in these proceedings.

[18] In the present case, the applicants were members of the Sabah State assembly who were directly affected by the proclamation of dissolution which they apply to declare as ultra vires the Sabah Constitution and void. They have a real and genuine interest in the subject matter herein. After considering the affidavit evidence and the submissions by all parties, this court finds that the applicants have met the requirements or threshold for locus standi enunciated in the above cases and are clothed with locus standi to bring this action for judicial review.

JUSTICIABILITY

[19] The applicant's main ground of contention is that the written request dated 29 July 2020 is invalid and is therefore, incapable of invoking and causing the YDPN to exercise his prerogative to dissolve the LA. The applicants are not challenging the exercise of the first respondent's personal discretion or prerogative to dissolve the LA.

The learned counsel for the applicants relied on the following local and commonwealth cases to support his contention that the issue of the dissolution of the LA was ultra vires the Sabah Constitution and is justiciable:

(a) *R (on the application of Miller) v The Prime Minister; Cherry and others v Advocate General for Scotland* [2019] UKSC 41; [2019] All ER (D) 61 (Sep);

(b) *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24; [2009] 4 CLJ 253;

(c) *Tun Datuk Haji Mohamed Adnan Robert v Tun Datu Haji Mustapha bin Datu Harun; Datuk Joseph Pairin Kitingan v Tun Datu Haji Mustapha bin Datu Harun* [1987] 1 MLJ 471

(d) *Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun* [2016] 4 MLJ 661; [2016] 7 CLJ 143;

(e) *Teh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional* [2015] MLJU 213;

(f) *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener)* [2004] 2 MLJ 257; [2004] 1 CLJ 701;

(g) *Tan Sri Musa bin Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another appeal* [2020] 3 MLJ 46; [2020] 3 CLJ 42;

(h) *Tan Sri Musa Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another case* [2019] 10 MLJ 329; [2019] 2 CLJ 813;

(i) *Dato' Dr Abd Isa bin Ismail v Dato' Abu Hasan bin Sarif & Anor* [2013] 2 MLJ 449; [2013] 2 CLJ 857;

(j) *Sime Darby Plantation Bhd v Pengarah Tanah dan Galian Negeri Melaka & Ors* 2020] 7 MLJ 776; [2020] 2 CLJ 409;

(k) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35;

(l) *YB Menteri Sumber Manusia v Association of Bank Officers, Peninsular Malaysia* [1999] 2 MLJ 337; [1999] 2 CLJ 471;

(m) *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135;

(n) *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145;

(o) *Chng Suan Tze v Minister of Home Affairs & Ors and other appeals* [1988] 1 SLR 132; [1988] 1 SLR(R) 525;

(p) *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50;

(q) *Sampanthan and others v Attorney General and others* [2019] 5 LRC 29;

(r) *Keke and Others v Scotty and Others (No 2)* [2013] 5 LRC 580;

(s) *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561;

(t) *Council of Civil Service Unions and others v Minister for the Civil*

Service [1984] 3 All ER 935; [1985] AC 374;

(u) *Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors* [2011] 1 MLJ 128;

(v) *Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal* [2016] MLJU 1649; [2016] 8 CLJ 804;

(w) *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133; [2020] 3 CLJ 593;

(x) *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525;

(y) *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2002] 2 MLJ 413; [2002] 2 CLJ 697;

(z) *QSR Brands Bhd v Suruhanjaya Sekuriti & Anor* [2006] 3 MLJ 164; [2006] 2 CLJ 532;

(aa) *Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors* [1987] 2 MLJ 724; [1988] 1 CLJ Rep 317; and

(ab) *Lim Cho Hock v Government of The State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148.

[20] The learned SFC submitted that the clear and unambiguous wordings of arts 7(1), 10(1) and (2), 21(2) and 21(4) of the Sabah Constitution clearly empower a Chief Minister to request for the dissolution of the Legislative Assembly and the YDPN to accede to that request and proclaim the dissolution of the LA. Therefore, the dissolution of the LA is not amenable to judicial review. The learned SFC relied on the case of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24; [2009] 4 CLJ 253 in which the Federal Court held that:

> (2) In resolving the question of *justiciability* of the orders sought by the applicants the governing provision was art 72(1), which must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to *ascertain whether a particular power that has been claimed has in fact been provided for.*

[21] In submitting that the issue of dissolution of the LA is non-justiciable, the learned SAG referred to the following cases:

(a) *Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors* [2011] 1 MLJ 128;

(b) *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan*

Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443; [2019] 4 CLJ 561;

(c) *Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321;

(d) *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927;

(e) *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd* [1995] 2 MLJ 442; [1995] 3 CLJ 627

(f) *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935; [1985] AC 374;

(g) *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385;

(h) *Superintendent of Pudu Prison & Ors v Sim Kie Chon* [1986] 1 MLJ 494;

(i) *Juraimi bin Husin v Pardons Board, State of Pahang & Ors* [2002] 4 MLJ 529;

(j) *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2007] SGHC 24;

(k) *Black v Canada (Prime Minister)* 2001 CanLII 8537 (ON CA);

(l) *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285; [2010] 2 CLJ 925;

(m) *Tun Datu Haji Mustapha bin Datu Harun v Tun Datuk Haji Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan* [1986] 2 MLJ 391;

(n) *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490;

(o) *Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors* [1987] 2 MLJ 724; [1988] 1 CLJ Rep 317;

(p) *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152;

(q) *Bar Malaysia v Peguam Negara Malaysia & Anor* [2016] MLJU 1597;

(r) *Khairuddin bin Abu Hassan v Tan Sri Mohamed Apandi Ali (sued in his capacity as the appointed 'Attorney General')* [2017] 9 MLJ 441;

(s) *Datuk Mohd Zaid bin Ibrahim v Peguam Negara Malaysia* [2017] 9 MLJ 502;

(t) *Datuk (Datu) Amir Kahar bin Tun Haji Mustapha v Tun Mohd Said bin Keruak & Ors* [1994] 3 MLJ 737;

(u) *Tan Sri Musa Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another case* [2019] 10 MLJ 329; [2019] 2 CLJ 813;

(v) *Re Pe Long @ Jimmy & Ors; Pe Long & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1976] 2 MLJ 133;

(w) *Yong Nyee Fan & Sons Sdn Bhd v Kim Guan & Co Sdn Bhd* [1979] 1 MLJ 182; and

(x) *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50.

EVALUATION AND FINDINGS BY THE COURT ON JUSTICIABILITY

[22] In determining the issue of justiciability in an application for leave for judicial review, I am guided by the principles in the recent decision of the Federal Court in *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561 (per Zawawi Salleh, FCJ) where His Lordship stated as follows:

> [48] It is trite that not all cases brought before courts are reviewable. Before proceeding to hear a case, a court must first examine, inter alia, its justiciability. 'Justiciability' concerns the limits upon legal issues over which a court can exercise its judicial authority. Non-justiciability in its administrative law sense signifies that a matter is not capable of or susceptible to, judicial review, as well as non-justiciability in the sense of there being no jurisdiction to entertain an issue or to grant approved relief.
>
> [49] The issue of justiciability in an application for leave for judicial review was considered in great detail by Mohamad Ariff Md Yusuf J (as he then was) in *Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors* [2011] 1 MLJ 128; [2010] 1 LNS 1390:
>
> > Non-justiciable Issues
> >
> > In connection with the unconstitutionality of legislation, we have seen that even where a fundamental right has been invaded by a statute, the individual who is affected thereby may not have a remedy from a Court of Law, because the issue involved is not justiciable.
> >
> > ... The most prominent amongst non-justiciable issues are those which are known in the USA as *'political questions',* which means that the subject matter of the question is such that it is not capable of a judicial determination (at p 256).
> >
> > The learned authors of *De Smith's Judicial Review* (6th Ed) have also appropriately observed in this connection that despite the wholesome development of administrative law, 'the fact remains, however, that there are

> some issues which are inherently unsuited to adjudication' and in this category of case, 'the Court acknowledges that the litigation process and the expertise of the Court are unsuited to resolving the question in hand' (at p 121).

A good definition of 'justiciability' can also be found in Chris Finn, *The Concept of 'Justiciability' in Administrative Law* in Groves & Lee, *Australian Administrative Law* (2007):

> The term 'justiciability' refers to the suitability for, or amenability to, judicial review of a particular administrative decision or class of decisions. The term derives from the common law and reflects a series of self-imposed judicial restraints, themselves founded in a view as to the appropriate constitutional balance between the respective roles of the executive and the judiciary. Thus, a matter may be deemed 'non-justiciable' by a Court which feels that its resolution either is beyond the institutional competence of the Court or would involve stepping outside its appropriate constitutional role (at p 143).

[50] There are certain areas which the court is reluctant to delve into. These include the power of the state to enter into treaties and conduct of foreign policy, the defence of the realm and the control of the armed forces, the prerogative of mercy, the dissolution of Parliament and the appointment of Ministers. Such powers are governed by *broader policy considerations* which are more appropriately entrusted to the political branches of Government, and which are unsuited to be examined by the courts. One such instance is the case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL) ('the *GCHQ* case').

[23] Based on the affidavit evidence filed in this action, it is debatable and unclear at what point of time did the second respondent lose the confidence of the majority of the members of the LA or at all.

[24] When the Chief Minister (CM) ceases to command the confidence of the majority of the members of the LA, the CM could request the Yang Di Pertua Negeri of Sabah (YDPN) to dissolve the LA and the YDPN could accede to the CM's request under art 7(1) of the State Constitution or exercise his discretion under art 10(2)(b) to withhold his consent to such a request for the dissolution of the LA. This is expressly provided for in art 7(1) read with art 10(2)(b) of the Sabah Constitution.

[25] Therefore, even if the second respondent had lost the confidence of the majority of the members of the LA on 29 July 2020, the second respondent could still request and advice the YDPN for a dissolution of the LA. Only when the request for dissolution is refused by the YDPN would the second respondent have to tender the resignation of the members of the Cabinet. See art 7(1) of the Sabah Constitution. Advice under art 10(1) does not depend on the loss of confidence of the majority of members of the LA. The second respondent could advise the first respondent to dissolve the LA to seek a fresh mandate regardless of whether he has or has not lost the confidence of the

majority of members of the LA. The first respondent has the absolute discretion to consent or to withhold his consent to dissolve the LA. See art 21(2) of the Sabah Constitution.

THE IMPUGNED WRITTEN REQUEST

[26] The words 'request' and 'advice' are not expressly defined in the Sabah Constitution. In the Concise Oxford English Dictionary (11th Ed, Revised), the meaning words 'request' and 'advice' are provided as follows:

'request'	—	an act of asking politely or formally for something. A thing that is asked for in such a way. Politely or formally request for. Politely or formally ask (someone) to do something.
'advice'	—	guidance or recommendations offered with regard to future action.

On a plain and careful reading of the contents of the written request dated 29 July 2020 (marked as exh TSMA2 of encl 2) from the second respondent to the first respondent with the subject 'Membubarkan Dewan Undangan Negeri Sabah' shows that the words used therein are unambiguous and the said letter is a 'request' by the second respondent for a dissolution of the LA. The said written request also contain words of 'advice' by the second respondent to the first respondent on the political situation and instability in the State of Sabah at the material time and the appropriateness to return the people's mandate to the people of Sabah to choose a new government. Therefore, the written request dated 29 July 2020 is a 'request' as well as an 'advice' for dissolution of the LA for the purpose of art 21(2). The proclamation clearly states that the same was made in the exercise of the first respondent's power under art 21(2) of the Sabah Constitution. See exh TSMA3 of encl 2.

[27] Although the applicants disputed the reference in the written request to art 10(1)(2)(b) of the Constitution of the State of Sabah on the ground that art 10(1)(2)(b) is mismatched or non-existent, the court will have regard to the substance over the form. It is important to look at the essential nature of the written request rather than external nomenclature. This is because the subject and the second paragraph of written request dated 29 July 2020 clearly and expressly states, inter alia, as follows:

— (Subject) *MEMBUBARKAN DEWAN UNDANGAN NEGERI SABAH*

— Dengan segala hormatnya, perkara di atas adalah dirujuk.

— Saya *memohon kepada Tuan Yang Terutama untuk membubar Dewan Undangan Negeri Sabah* dengan serta merta.

— Ini adalah *disebabkan keadaan politik di negeri Sabah pada ketika ini tidak lagi*

stabil dan diancam oleh pihak tertentu yang berniat untuk menjatuhkan kerajaan pimpinan Parti Warisan Sabah yang ada sekarang. Dengan keadaan ini, maka adalah sesuai kita kembalikan mandat rakyat negeri Sabah untuk memilih kerajaan baharu.

— Justeru saya memohon supaya Tuan Yang Terutama Tun *mempertimbangkan dan meluluskan pembubaran Dewan Undangan Negeri Sabah* atas kuasa TYT di dalam Perlembagaan Negeri Sabah seperti di dalam peruntukan 10(1)(2)(b).

— Sekian, terima kasih.

[28] Further, there is no statutory form or official format for a request or advice for dissolution of the LA prescribed or provided under the State Constitution or other written law applicable to Sabah. In the absence of any formal legal requirement or form, the court would look at the substance of the written request rather than the form. See: (1) *Majlis Peguam Malaysia v Rajehgopal a/l Velu & Anor* [2017] 1 MLJ 596; [2017] 2 CLJ 493; (2) *Yong Sze Fun & Anor (t/a Perindustrian Makanan & Minuman Layang-Layang) v Syarikat Zamani Hj Tamin Sdn Bhd & Anor* [2012] 1 MLJ 585; [2011] 1 LNS 1307; and (3) *Re Pe Long @ Jimmy & Ors; Pe Long & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1976] 2 MLJ 133.

[29] Declaration and certiorari are equitable remedies. See: (1) *Sykt Showkat Industries & Realty Sdn Bhd v Gergaji Development Sdn Bhd* [2018] MLJU 1486; [2018] 1 LNS 1584 (2) *Shamsudin bin Che Mat & Ors v Datuk Bandar Kuala Lumpur* [2000] 4 MLJ 177; [2000] 1 LNS 185. It is settled principle that equity looks to the substance rather than the form. See *Chin Jhin Thien & Anor v Chin Huat Yean @ Chin Chun Yean & Anor* [2020] 4 MLJ 581; [2020] 7 CLJ 137.

[30] If the Legislature intended that the request or advice for dissolution must be in a particular format and must quote the correct article or provision of the constitution, the Legislature would have enacted express provision or statutory form for such purpose. It would be unreasonable to hold or expect that all advice by the CM to the YDPN must be reduced in writing and must quote the correct or relevant provision of the Sabah Constitution when there is no express provision or requirement in the Sabah Constitution to that effect. Frequently, the advice given in various circumstances such as public health, security, economy and the political situation may be confidential in nature or depends on the exigencies of the situation. It would be impractical to insist that the CM's advice to the YDPN must be in a specific written form.

[31] In *Dato' Dr Zambry Abd Kadir v Dato' Seri Ir Mohammad Nizar Jamaluddin,* the Court of Appeal stated that:

[11] At the outset, it must be stated that the DYMM Sultan of Perak has the absolute discretion to withhold the consent for a request for the dissolution of the

Legislative Assembly, *irrespective of whether the request is made under art XXXVI(2) or art XVI(6) of the Perak State Constitution. The absolute discretion of His Royal Highness is found in art XVIII(2)(b).* It reads:

> (2) His Royal Highness may act in His discretion in the performance of the following functions (in addition to those in the performance of which He may act in His discretion under the Federal Constitution) that is to say:
>
> (a) the appointment of a Menteri Besar;
>
> (b) the withholding of consent to a request for the dissolution of the Legislative Assembly ...

[32] The Perak case above illustrates the point that a request for dissolution can be made under arts XXXVI(2) or XVI(6) of the Perak Constitution. It gives room for flexibility and is not confined to a specific form or art of the constitution. Articles XVI(6), XVIII(2)(a) and (b) and XXXVI(2) of the Perak Constitution are in pari materia with arts 7(1), 10(1) and (2)(b) and 21(2) of the Sabah Constitution except for minor differences in describing the Ruler of Perak as His Royal Highness, the CM as Menteri Besar and the Executive Council as Cabinet.

[33] The learned counsel for the applicants submitted that the Perak Constitution is different in that there is no provision in the Perak Constitution that is similar to art 10(4) of the Sabah Constitution. In my view, art 10(4) of the Sabah Constitution does not take away or diminish the prerogative power or absolute discretion of the YDPN to withhold or not to withhold consent to the dissolution of the LA but serves to reinforce the same. Therefore, even if a wrong article or no provision is cited in the written request or advice for dissolution, the court will still look at the substance of the request or advice rather than the form to determine the nature and legal effect thereof. I would similarly adopt the ambulatory approach in *Datuk Hj Mohammad Tufail Mahmud*'s case in interpreting the Sabah Constitution in this case. Applying the aforesaid cases to the facts of this case and the principle of interpreting constitutions broadly with less rigidity and more generosity, this Court finds the written request and advice dated 29 July 2020 is sufficient and capable of causing the first respondent to invoke and exercise his prerogative and constitutional duty to dissolve the LA under art 21(2) of the Sabah Constitution.

[34] The learned counsel for the applicants referred to the recent case of *R (on the application of Miller) v The Prime Minister; Cherry and others v Advocate General for Scotland* [2019] UKSC 41; [2019] All ER (D) 61 (Sep), ('Miller's case'). In *Miller*'s case, the UK Supreme Court held as follows:

> 35. Having made those introductory points, we turn to the question whether the issue raised by these appeals is justiciable. How is that question to be answered? In

the case of prerogative powers, it is necessary to distinguish between two different issues. *The first is whether a prerogative power exists, and if it does exist, its extent. The second is whether, granted that a prerogative power exists, and that it has been exercised within its limits, the exercise of the power is open to legal challenge on some other basis. The first of these issues undoubtedly lies within the jurisdiction of the courts and is justiciable,* as all the parties to these proceedings accept. If authority is required, it can be found in the decision of the House of Lords in the case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374. The *second of these issues, on the other hand, may raise questions of justiciability.* The question then is not whether the power exists, or whether a purported exercise of the power was beyond its legal limits, but *whether its exercise within its legal limits is challengeable in the courts on the basis of one or more of the recognised grounds of judicial review. In the Council of Civil Service Unions case,* the House of Lords concluded that the answer to that question would depend on the nature and subject matter of the particular prerogative power being exercised. *In that regard, Lord Roskill mentioned at p 418 the dissolution of Parliament as one of a number of powers whose exercise was in his view non-justiciable.*

[35] Applying the principles in *Miller*'s case in determining whether the proclamation is non-justiciable, the court is entitled to identify and consider three issues:

(a) firstly, whether the first respondent has the discretionary powers to dissolve the LA;

(b) secondly, to determine what the parameters and limits of such discretionary powers are (both issue (a) and (b) are issues of law which the court is entitled to determine and are justiciable); and

(c) thirdly, that if the court finds the exercise of such discretionary powers are within the parameters and limits prescribed in the Constitution, whether the exercise of such powers to dissolve the LA are non-justiciable.

[36] The following provisions of the Sabah Constitution are relevant to the issue of whether the first respondent has the discretionary powers to dissolve the LA:

Article 7(1):

If the Chief Minister ceases to command the confidence of a majority of the members of the Legislative Assembly, then, *unless at his request the Yang di-Pertua Negeri dissolves the Assembly,* the Chief Minister shall tender the resignation of the members of the Cabinet.

Article 10:

(1) In the exercise of his functions under this Constitution or any other law, or as a member of the Conference of Rulers, the *Yang di-Pertua Negeri shall act in accordance with the advice of the Cabinet or of a member thereof acting under the general authority of the Cabinet,* except as otherwise provided by the Federal

Constitution or this Constitution; but shall be entitled, at his request, to any information concerning the government of the State which is available to the Cabinet.

(2) The *Yang di-Pertua Negeri may act in his discretion in the performance of the following functions* —

(a) the appointment of a Chief Minister;

(b) the *withholding of consent to a request for the dissolution of the Legislative Assembly.*

(3) The *Legislature may by law make provision for requiring the Yang di-Pertua Negeri to act after consultation with, or on the recommendation of, any person or body of persons other than the Cabinet in the exercise of any of his functions except* —

(a) *functions, exercisable in his discretion;* and

(b) functions with respect to the exercise of which provision is made in the Federal Constitution or any other Article of this Constitution.

(4) For removing doubts, it is hereby declared that Clause (1) of this Article or otherwise Clause (3) of this Article shall have effect and force on the Yang di-Pertua Negeri in performing any of his functions under this Constitution or any other law; and *the Yang di-Pertua Negeri may use his discretion only when performing his functions under Clause (2) of this Article and no other.*

Article 21(2):

The Yang di-Pertua Negeri may prorogue or dissolve the Legislative Assembly.

(4) Whenever the Legislative Assembly is dissolved, a *general election shall be held within sixty days from the date of the dissolution* and the new Legislative Assembly will be summoned to meet on a date not later than one hundred and twenty days from that date.

[37] It is observed that there is no express provision in the Sabah Constitution that require the YDPN to consult other persons or members of the LA before he could dissolve the LA. There is also no law or legal provision made under art 10(3) of the Sabah Constitution that require such consultation or advice.

[38] It is clear that art 10(2)(b) (read with art 7 (1) and art 21(2)) of the Sabah Constitution expressly provide the first respondent with personal discretion to withhold consent to a request for dissolution of the LA. *The first respondent has absolute discretion on whether to dissolve or withhold his consent to dissolve the LA.* In*Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285; [2010] 2 CLJ 925, the Federal Court held:

[34] In this regard we would, however, add that the *power to dissolve the LA is vested in HRH by art. XXXVI(2) no matter in what circumstances it was made.* This is clear

from our reading of the said article which provides:

(2) His Royal Highness may prorogue or dissolve the Legislative Assembly.

This is the only provision touching on the dissolution of the LA. Article XVI(6), in our view, does not provide for the dissolution of the LA as such, but merely provides that the MB may in the circumstances stated in art. XVI(6) request HRH for the dissolution of the LA. It does not confer the power on HRH to dissolve the LA. So in the event HRH accedes to the request for the dissolution of the LA it has to be done under XXXVI(2) not under art. XVI(6). As we see it art. XXXVI(2) is a general power to dissolve the LA, but the circumstances under which the LA may be dissolved are varied, and one such circumstance is when there is a request by the MB to do so under art. XVI(6) and HRH agrees to such a request. Other instances that we can think of, is *where the Government of the day may request for the dissolution of the LA prior to expiry of the five year term in order to get a fresh mandate from the electorate. It is important to note that in all cases, the decision whether or not to dissolve the LA is in the absolute discretion of HRH. HRH does not act on advice of the Executive Council in the matter of dissolution of the LA.* This is clearly stated in art XVIII(2)(6).'

[39] Therefore unless the first respondent can be shown to have either breached or exceeded his constitutional powers, the courts will not review decisions of this nature. See (1) *Datuk (Datu) Amir Kahar bin Tun Haji Mustapha v Tun Mohd Said bin Keruak & Ors* [1994] 3 MLJ 737; and (2) *Tan Sri Musa Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor and another case* [2019] 10 MLJ 329; [2019] 2 CLJ 813.

[40] It is an undisputed fact that in 1986, the YDPN had granted a dissolution of the LA even within one year from the date of General Election in Sabah in 1985 to allow the then Chief Minister's request to seek a fresh mandate. This power was exercised consistently pursuant to art 21(2) of the State Constitution. Following the early dissolution of the LA, a fresh state election was held in Sabah in 1986. See Government of Sabah *Gazette* No 141 dated 18 March 1985 and No 81 dated 27 February 1986. This court could take judicial notice of this undisputed fact.

[41] In the present case, the first respondent consented to the request or advice made by the second respondent for a dissolution of the LA vide a proclamation of dissolution dated 30 July 2020. The said proclamation was made by the first respondent in the exercise of his powers under art 21(2) of the State Constitution to enable the second respondent to seek a fresh mandate. See exh TSMA3 of encl 2.

[42] The learned SAG submitted that in exercising his power to consent to the request for dissolution, the YDPN would have exercised his discretion to not withhold consent for dissolution. This court is in agreement with the submission of the learned SAG that by consenting to grant a dissolution of the

LA means the first respondent having rejected the other alternative of withholding such consent to dissolve the LA. In doing so, the first respondent would need to consider whether to agree or to withhold consent in exercising his discretion to dissolve the LA. In other words, they are the flip side of the same coin or subject matter. The approval of consent for dissolution would effectively mean the refusal to withhold consent for dissolution of the LA.

[43] It is trite that the courts have decided that the YDPN is vested with the discretion to order dissolution or not under art 21(2) read with art 10(2) of the State Constitution. See *Tun Datu Haji Mustapha bin Datu Harun v Tun Datuk Haji Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan* [1986] 2 MLJ 391 wherein the High Court held that:

> ... even if advice is tendered to the first defendant to have the State Assembly dissolved other than under art 7 of the State Constitution the *first defendant is vested with a discretion to order dissolution or not under art 21(2) read with art 10(2) thereof.* Where the Constitution itself had invested the first defendant with that discretion the court held that it was extremely improper that it should interfere by means of an injunction. Such an injunction would certainly run counter to the spirit of art 21(2) and read with art 10(2) thereof. For this reason the court held that it had no jurisdiction to grant an injunction in the circumstances asked for that would *interfere with the first defendant's exercise of his discretion.*

See also *Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors* [1987] 2 MLJ 724; [1988] 1 CLJ Rep 317.

[44] The discretion exercised by the first respondent is similar in nature to the discretion provided to the Attorney General of Malaysia in the exercise of his prosecutorial powers pursuant to art 145(3) of the Constitution. The courts have consistently held that such discretion is beyond the scope of judicial review. See: (1) *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152; (2) *Bar Malaysia v Peguam Negara Malaysia & Anor* [2016] MLJU 1597; (3)*Khairuddin bin Abu Hassan v Tan Sri Mohamed Apandi Ali (sued in his capacity as the appointed 'Attorney General')* [2017] 9 MLJ 441; and (4) *Datuk Mohd Zaid bin Ibrahim v Peguam Negara Malaysia* [2017] 9 MLJ 502.

[45] The subject matter in this case concerns the dissolution of the LA vide the proclamation dated 30 July 2020. The learned counsel for the applicants submitted that the applicants are not attacking or disputing the exercise of the first respondent's personal discretion or power to dissolve the LA. In *Dato' Dr Zambry bin Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin (Attorney General of Malaysia, intervener)* [2009] 5 MLJ 464; [2009] 5 CLJ 265, the Court of Appeal (per Raus Sharif JCA as his Lordship then was) held that:

(1) Under the Perak State Constitution, the request for dissolution of the Legislative Assembly is found in art XXXVI(2) and art XVI(6). The Sultan has the *absolute discretion to withhold the consent for a request for the dissolution* of the Legislative Assembly, *irrespective* of whether the *request is made under art XXXVI(2) or art XVI(6)*. The *withholding of consent to a request for the dissolution is a Royal Prerogative and is not justiciable.*

[46] The Federal Court have decided that the subject matter of whether to consent or to withhold consent to dissolution is an absolute discretion of the first respondent (YDPN). Hence, the subject matter of dissolution is not amenable to judicial review or is non-justiciable. See: (1) *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285; [2010] 2 CLJ 925; (2) *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935; [1985] AC 374; (3) *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385; (4) *Superintendent of Pudu Prison & Ors v Sim Kie Chon* [1986] 1 MLJ 494; (5) *Juraimi bin Husin v Pardons Board, State of Pahang & Ors* [2002] 4 MLJ 529; and (6) *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561.

[47] The Commonwealth cases in *Sampanthan v Attorney General* and *Keke v Scotty* above are distinguishable in that the relevant provisions in the constitution of the respective countries are different and have placed limits on the exercise of the power of dissolution.

[48] After reading and giving careful consideration to the application, statutory statement, affidavits and submissions filed by the parties and after hearing clarification of submissions from the learned counsels of the respective parties, this court finds that the second respondent had acted within his constitutional right or power to request and advice the first respondent to dissolve the LA on 29 July 2020 and the first respondent acted within the ambit of his constitutional power to dissolve the LA. In the premises, the said dissolution and proclamation dated 30 July 2020 are constitutional and valid. The issue of how and what did the YDPN consider or why he did or did not consult other persons when exercising his discretion to dissolve the LA involves political and broader policy considerations which are not suitable or amenable to judicial review. Based on the aforesaid reasons, this court finds that the dissolution and proclamation is not amenable to judicial review and is non-justiciable.

[49] In the light of the findings hereinabove and based on the aforesaid reasons and authorities, leave to apply for judicial review is refused and encl 1 is dismissed. As the putative respondents are not pressing for costs and this case

A not only involves the applicants but also concerns a matter of public interest and importance, I make no order as to costs.

Enclosure 1 dismissed.

B Reported by Nabilah Syahida Abdullah Salleh

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